

REMARKS/ARGUMENTS

Claim Objections

The Examiner has objected to claims 1, 12 and 25. Claim 1 has been amended to correct the informalities addressed by the examiner.

In claim 12, the Examiner questioned whether the step of “inserting a plant container into the interior volume of the wire structure” should follow the step of “pulling up on said at least one loop...” The applicant has determined that the step of “pulling up on said at least one loop...” is unnecessary and has amended the claim accordingly.

In claim 25, the Examiner finds “disposed connected” unclear. The claim has been amended to read “at least one vertically spaced and horizontally disposed ring connected...” This amendment makes it clear that “connected” modifies “ring” rather than “disposed”.

Applicant respectfully submits that the claim objections have been overcome by the amendments made to claims 1, 12 and 25.

Applicant has also amended claims 1-10, 15 and 16, to recite a container stabilizer rather than a plant support or plant cage. Applicant has found that the invention, though suitable for both purposes, is enjoying substantial market success as a container stabilizer.

§ 103 Rejections

The Examiner has rejected claims 1, 4, 5, 7-9, 15 and 25 under § 103 as being unpatentable over Emalfarb et al in view of Markowski. Claims 4, 5, 7-9, and 15 depend, directly or indirectly, from claim 1.

As to claim 1, the Examiner has submitted that Emalfarb discloses a stackable plan support comprising an upper ring; a lower ring; at least one leg attached to the upper ring and lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member are adapted to engage the ground; and the plant support shaped to enclose plants and support plant containers by inserting a plant container into the interior volume of the wire structure, wherein the plant container is supported above the ground by the wire structure. Applicant respectfully disagrees.

At a minimum, Emalfarb does not disclose or suggest a stackable plant support in which at least one leg is an elongated U-shaped member with an open end. The figures in Emalfarb clearly show that the ends of the legs 20, 22, and 24 are joined together to form lower closed ends opposite the upper closed ends. Thus, legs 20, 22 and 24 have two closed ends rather than open and closed ends as called for by claim 1.

Moreover, though not specifically described, the figures show the ends of the U-shaped members of Emalfarb joined and capped by a blunt cap-like member. Applicant submits that these caps not only close the ends of the U-shaped members, but act to allow the stand to be placed on a floor or deck surface without causing damage thereto. Applicant submits that these caps teach away from a leg designed to be placed in the ground. Not only would the cap provide added resistance to placing the legs into the ground, the cap may be lost upon removing the leg from the ground. Additionally, the angled configuration of the legs in Emalfarb would increase the amount of force

necessary to place the legs into the ground as the width of the legs continually increase from the lower end to the upper end. Therefore, the ends of the two portions of the U-shaped member of Emalfarb is not adapted to engage the ground.

Insofar as Applicant has shown that claim 1 is not rendered obvious by Emalfarb in view of Markowski, claims 4,5, 7-9 and 15 are not obvious as they depend from a claim that is non-obvious.

The examiner also rejected claim 25 as being obvious over Emalfarb in view of Markowski. Applicant notes that the arguments made by the Examiner in support of this rejection seem to be directed toward the claim language of claim 1 rather than to the claim language of claim 25. For example, claim 25 does not recite "the ends of the two portions of the U-shaped member are adapted to engage the ground." Additionally, neither reference teaches or suggests both providing "at least one loop formed by the connection of said at least one leg and at least one ring..." The loop shown in Markowski is not formed by the connection of the at least one leg to the at least one ring.

§ 102 Rejections

Claims 10 and 16 have been rejected as being anticipated by Arnett. Applicant respectfully disagrees with the purported anticipation found by the Examiner. Arnett teaches a towel rack and makes no mention of using the device as a plant holder. Moreover, even if *arguendo* the Arnett apparatus were a plant holder, it is not shaped to facilitate the stacking of a plurality of plant cage apparati. Additionally, Arnett does not disclose a ledge formed on at least one leg of said legs for securement of the plant cage apparatus relative to the associated plant.

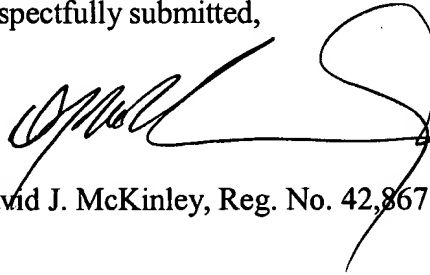
Applicant appreciates that the Examiner has found claims 2 and 3 allowable if rewritten in independent form to include the limitations of claim 1, however,

Application No. 09/930,917
Amendment Dated May 11, 2004
Reply to Office Action of February 23, 2004

Applicant earnestly believes that claim 1 is now allowable in light of the amendments and arguments made. Applicant is further appreciative that claims 12 and 14 have been allowed.

Applicant respectfully submits that all claims are now in condition for allowance. The Examiner is also invited to call Applicant's attorney, David J. McKinley, at 612-607-7384 if any discussions may more quickly place the claims in issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. McKinley', with a large, stylized loop at the end.

David J. McKinley, Reg. No. 42,867

Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402-1609
Atty. Docket No. 2086-305